

Page 1

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

-----x

SAMSUNG ELECTRONICS CO., LTD.
SAMSUNG ELECTRONICS AMERICA, INC.,
vs. Petitioner,
OURARING INC.,
Patent Owner.

Case PGR2024-00030
U.S. Patent No. 11,868,178
and
Case PGR2024-00039
U.S. Patent No. 11,874,702

-----x

C O N F I D E N T I A L
OUTSIDE ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF MICHAEL DAVIES
Thursday, August 14, 2025
Conducted Remotely

REPORTED BY:

Christina Diaz, RDR CRC CRR RMR CSR-NY/NJ CLR

Digital Evidence Group
1730 M Street NW, Suite 812
Washington, DC 20036
202.232.0646

<p style="text-align: right;">Page 2</p> <p>1 2 3 August 14, 2005 4 9:01 A.M. E.S.T. 5 6 Videotaped deposition of MICHAEL 7 DAVIES, taken by Patent Owner, conducted 8 remotely, before Christina Diaz, a 9 Registered Diplomate Reporter, Certified 10 Realtime Captioner, Certified Realtime and 11 Registered Merit Reporter and Notary Public 12 within and for the State of New York. 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S (Cont'd.) 2 3 MAYER BROWN LLP 4 Attorneys for Patent Owner Ouraring Inc. 5 1999 K Street, NW 6 Washington, D.C. 20006-1101 7 202.265.3065 8 jvidwan@mayerbrown.com 9 BY: JASJIT VIDWAN, ESQ. 10 11 ALSO PRESENT: 12 HENRY MARTE, Videographer 13 14 15 16 17 18 19 20 21 22</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S 2 3 O'MELVENY & MYERS LLP 4 Attorneys for Petitioners 5 Samsung Electronics Co., Ltd., and 6 Samsung Electronics America, Inc. 7 2801 North Harwood Street 8 Suite 1600 9 Dallas, TX 75201 10 972.360.1900 11 jkappos@omm.com 12 BY: JOHN KAPPOS, ESQ. 13 - and - 14 1625 Eye Street NW 15 Washington, D.C. 20006 16 202.383.5300 17 rzervos@omm.com 18 BY: RENIA ZERVOS, ESQ. 19 20 21 22</p>	<p style="text-align: right;">Page 5</p> <p>1 I N D E X 2 WITNESS 3 Michael Davies 4 EXAMINATION BY PAGE 5 Mr. Vidwan 8 6 7 8 E X H I B I T S 9 10 PETITIONER DESCRIPTION PAGE 11 SAMSUNG 12 Exhibit 1080 Reply Declaration of 11 13 Mr. Michael A.M. Davies 14 in Support of Petition 15 for Post-Grant Review 16 of U.S. Patent No. 11,868,278, 172 pages 17 18 Exhibit 1080 Reply Declaration of 12 19 Mr. Michael A.M. Davies 20 in Support of Petition 21 for Post-Grant Review 22 of U.S. Patent No. 11,874,702, 185 pages Exhibit 1152 Presentation, six pages 72</p>

<p style="text-align: right;">Page 6</p> <p>1 S T I P U L A T I O N S</p> <p>2</p> <p>3 I T I S H E R E B Y S T I P U L A T E D A N D A G R E E D ,</p> <p>4 by and between counsel for the respective</p> <p>5 parties hereto, that all objections, except</p> <p>6 as to form, are reserved to the time of</p> <p>7 trial.</p> <p>8</p> <p>9 I T I S F U R T H E R S T I P U L A T E D A N D A G R E E D</p> <p>10 that the deposition may be signed and sworn</p> <p>11 to before any officer authorized to</p> <p>12 administer an oath.</p> <p>13</p> <p>14 I T I S F U R T H E R S T I P U L A T E D A N D A G R E E D</p> <p>15 that the sealing and filing of the</p> <p>16 deposition be waived.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 8</p> <p>1 Renia Zervos also of O'Melveny & Myers.</p> <p>2 And we represent the Samsung</p> <p>3 petitioners in this matter.</p> <p>4</p> <p>5 M I C H A E L D A V I E S ,</p> <p>6 having been remotely sworn as</p> <p>7 stipulated by the parties, was examined</p> <p>8 and testified as follows:</p> <p>9</p> <p>10 E X A M I N A T I O N</p> <p>11 BY MR. VIDWAN:</p> <p>12</p> <p>13 Q. Good morning, Mr. Davies.</p> <p>14 A. Good morning.</p> <p>15 Q. Am I pronouncing that right?</p> <p>16 A. Sorry. I missed what you said</p> <p>17 there.</p> <p>18 Q. Good morning, Mr. Davies. Am I</p> <p>19 pronouncing that right, your name?</p> <p>20 A. You are pronouncing it correctly,</p> <p>21 yes.</p> <p>22 Q. As I just introduced myself, my</p>
<p style="text-align: right;">Page 7</p> <p>1 T H E V I D E O G R A P H E R : We are now on</p> <p>2 the record.</p> <p>3 My name is Henry Marte. I am a</p> <p>4 videographer with Digital Evidence</p> <p>5 Group. Today's date is August 14,</p> <p>6 2025. And the time is 9:01 a.m.</p> <p>7 This deposition is being held in</p> <p>8 the matter of Samsung Electronics</p> <p>9 versus Ouraring, Inc.</p> <p>10 The deponent today is Mr. Michael</p> <p>11 Davies. All parties to this deposition</p> <p>12 are appearing remotely and have agreed</p> <p>13 to the witness being sworn in remotely.</p> <p>14 Counsel, please identify</p> <p>15 themselves for the record, after which</p> <p>16 the court reporter will administer the</p> <p>17 oath to the witness.</p> <p>18 M R . V I D W A N : Jasjit Vidwan on</p> <p>19 behalf of patent owner Ouraring with</p> <p>20 Mayer Brown.</p> <p>21 M R . K A P P O S : John Kappos of</p> <p>22 O'Melveny & Myers. And with me is</p>	<p style="text-align: right;">Page 9</p> <p>1 name is Jasjit Vidwan. I am here on behalf</p> <p>2 of the patent owner Ouraring.</p> <p>3 Could you please state your full</p> <p>4 name and address for the record?</p> <p>5 A. My full name is Michael Allan</p> <p>6 Martin Davies, and my home address is 98</p> <p>7 Trowbridge Street, Cambridge,</p> <p>8 Massachusetts, 02138, United States of</p> <p>9 America.</p> <p>10 Q. Mr. Davies, have you been deposed</p> <p>11 before?</p> <p>12 A. Yes.</p> <p>13 Q. About how many times have you</p> <p>14 been deposed?</p> <p>15 A. Over the last decade or so,</p> <p>16 probably about twenty times. Something</p> <p>17 along those lines.</p> <p>18 Q. So I am going to assume that you</p> <p>19 are familiar with the proceeding, so I am</p> <p>20 not going to go over all the rules. I am</p> <p>21 going to touch on some briefly so that we</p> <p>22 are on the same page.</p>

<p style="text-align: right;">Page 10</p> <p>1 Let me know if you don't hear my 2 question or don't understand my question. 3 If you answer, I will assume that you both 4 heard it and understood it. 5 Is that fair? 6 A. Yes. 7 Q. And we also have a court reporter 8 here, and we are doing this remotely. So 9 it would be helpful if we don't speak over 10 each other and give a verbal response. The 11 court reporter can't note down just head 12 nods and shaking. 13 So if you can do that, would that 14 be fair? 15 A. Yes. 16 Q. And let me know if you need a 17 break at any point. All I ask is that if 18 there is a question pending, that you 19 answer that before we take a break. 20 Does that work for you? 21 A. Yes, it does work for me. 22 Q. Let me know if at any point</p>	<p style="text-align: right;">Page 12</p> <p>1 for identification) 2 (Petitioner Samsung Exhibit 1080, 3 Reply Declaration of Mr. Michael A.M. 4 Davies in Support of Petition for 5 Post-Grant Review of U.S. Patent No. 6 11,874,702, 185 pages, was referenced 7 for identification) 8 BY MR. VIDWAN: 9 Q. Mr. Davies, do you have a 10 physical copy or electronic copy on your 11 end of this? 12 A. I have a physical copy. 13 Q. Are there any markings on it? 14 A. No. 15 Q. Do you want us to share on the 16 screen as well or is it okay if we just 17 kind of go with your physical copy and our 18 physical copy? 19 What would you prefer here? 20 A. It would probably be helpful to 21 share it on the screen as well to make sure 22 I am, in fact, in the same place as you.</p>
<p style="text-align: right;">Page 11</p> <p>1 during today's deposition you realize that 2 an answer that you previously gave was 3 incorrect or incomplete. All you have to 4 do is let me know that you have something 5 you want to fill in or correct, and we can 6 do that at any point. 7 Does that work? 8 A. Yes, it does. 9 Q. Great. 10 Is there any reason why you can't 11 give your full and complete answers today? 12 A. Not that I am aware of. 13 MR. VIDWAN: Let's go ahead and 14 get started with your declaration, 15 which is marked Exhibit 1080. And 16 that's the same exhibit in both the 17 '178 and the '702 patents. 18 (Petitioner Samsung Exhibit 1080, 19 Reply Declaration of Mr. Michael A.M. 20 Davies in Support of Petition for 21 Post-Grant Review of U.S. Patent No. 22 11,868,278, 172 pages, was referenced</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Perfect. Given the significant 2 overlap between the two declarations -- 3 there are some differences -- I am going to 4 start with primarily '178 Patent 5 declaration, but you are welcome to refer 6 to either one that you have in a copy, or 7 if you want us to pull up the '702, we can 8 do that as well. 9 Does that work? 10 A. That works for me, yes. 11 MR. VIDWAN: Counsel, just given 12 the subject matter of this deposition, 13 I am going to go ahead and mark this 14 entire transcript confidential under 15 the protective order for outside 16 attorneys' eyes only. 17 BY MR. VIDWAN: 18 Q. Mr. Davies, I want to start with 19 paragraph 159, which is on page 94. 20 Do you see where it says -- you 21 say that, "Commercial performance of Oura 22 Ring is not a significant success"?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. Yes.</p> <p>2 Q. Is it your understanding that in</p> <p>3 order for there to be commercial success it</p> <p>4 has to be a quote, unquote, "significant</p> <p>5 success"?</p> <p>6 A. I need to check what the list of</p> <p>7 the specific criteria are about whether or</p> <p>8 not the specific word "significant" is, but</p> <p>9 my phrasing was carefully chosen here.</p> <p>10 It might have some limited degree</p> <p>11 of success, but that would have been a</p> <p>12 longer answer to the question.</p> <p>13 Q. That's fair.</p> <p>14 So would you agree with me that</p> <p>15 Oura Ring Gen 3, at least had some</p> <p>16 commercial success?</p> <p>17 A. Well, hang on. There are two</p> <p>18 Oura Ring Gen 3 products.</p> <p>19 Q. Right.</p> <p>20 A. And they have importantly</p> <p>21 different characteristics.</p> <p>22 So which of the two Gen 3</p>	<p style="text-align: right;">Page 16</p> <p>1 attributable to either the Gen 3 Horizon or</p> <p>2 the Gen 3 Heritage.</p> <p>3 In fact, it would seem from my</p> <p>4 analysis, as I think I set out, to flow</p> <p>5 largely from within the Gen 3 as a whole,</p> <p>6 Gen 3 Heritage.</p> <p>7 BY MR. VIDWAN:</p> <p>8 Q. Let's take it one step at a time</p> <p>9 here.</p> <p>10 We will definitely get to your</p> <p>11 concern about the significance and</p> <p>12 magnitude, but I am just asking you a</p> <p>13 broader question right now.</p> <p>14 Does that sound fair?</p> <p>15 A. Yes.</p> <p>16 Q. So going back, would you agree</p> <p>17 with me that Oura Ring Gen 3 Heritage had</p> <p>18 some commercial success?</p> <p>19 A. Yes. As in, it did not have no</p> <p>20 commercial success. It did have some</p> <p>21 commercial success. Not no commercial</p> <p>22 success.</p>
<p style="text-align: right;">Page 15</p> <p>1 products are you referring to? Or are you</p> <p>2 referring to them together?</p> <p>3 Q. Actually the question was of the</p> <p>4 Gen 3, but I will repeat my question, if</p> <p>5 that helps.</p> <p>6 A. Certainly.</p> <p>7 Q. Would you agree with me that Oura</p> <p>8 Ring Gen 3, at least had some commercial</p> <p>9 success?</p> <p>10 MR. KAPPOS: Object to form.</p> <p>11 A. There are two products that</p> <p>12 comprise Oura Ring Gen 3, two debiting</p> <p>13 products. If by Gen 3 Ouraring you mean</p> <p>14 Oura Ring Heritage and Oura Ring Gen 3</p> <p>15 Horizon together, then, yes, there was some</p> <p>16 commercial success, but the emphasis on</p> <p>17 "some."</p> <p>18 Moreover, the evidence available</p> <p>19 makes it difficult or impossible to</p> <p>20 distinguish accurately from the information</p> <p>21 with which I have been provided to what</p> <p>22 extent the commercial success was</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. That's the point I am trying to</p> <p>2 get at here.</p> <p>3 You are not opining that Oura</p> <p>4 Ring Gen 3 Heritage was a commercial</p> <p>5 failure, are you?</p> <p>6 A. No. I am not opining that it</p> <p>7 failed completely. They did sell some</p> <p>8 units -- tens of thousands.</p> <p>9 Q. You said "tens of thousands"?</p> <p>10 A. Yes.</p> <p>11 Q. Would you agree with me that Oura</p> <p>12 Ring Gen 3 Horizon had some commercial</p> <p>13 success?</p> <p>14 A. It's impossible to be certain.</p> <p>15 Q. But you are not here offering an</p> <p>16 opinion that Oura Ring Gen 3 Horizon was a</p> <p>17 commercial failure, are you?</p> <p>18 A. I don't have an opinion one way</p> <p>19 or another. But at least as far as I can</p> <p>20 tell from the available data, there is not</p> <p>21 significant evidence that Gen 3 Heritage</p> <p>22 had any commercial success.</p>

<p style="text-align: right;">Page 18</p> <p>1 The way in which the sales 2 figures are set out means that it is 3 impossible to determine from them whether 4 or not Gen 3 Heritage had any commercial 5 success at all. It may have been a 6 commercial failure. I can't tell.</p> <p>7 Q. And, well, let's take Gen 4 then 8 because that one doesn't have different 9 variations, correct?</p> <p>10 A. Correct.</p> <p>11 Q. So would you agree with me that 12 Oura Ring Gen 4 had some commercial 13 success?</p> <p>14 A. I would be unsurprised if it had 15 at least some commercial success. But, 16 again, the fact that the sales conflate the 17 data for different products means that it's 18 difficult or impossible to tell the extent 19 that it had.</p> <p>20 Q. So let's get to the issue of 21 significance or how much needs to be 22 significant. You keep repeating that.</p>	<p style="text-align: right;">Page 20</p> <p>1 paragraph 168, I set out that when 2 considering all wearable devices, smart 3 rings account for [REDACTED] of the 4 overall expected wearable shipments. And 5 the chart on Figure 25 puts that into 6 context.</p> <p>7 For it to have been a significant 8 commercial success, outside the very narrow 9 use case for which it is adopted by a small 10 number of users, I would expect something 11 significantly greater than north [REDACTED] 12 market share. North [REDACTED] market 13 share is not a significant commercial 14 success.</p> <p>15 Q. What share of the market would 16 the Oura Ring have to rise to be considered 17 a significant commercial success in your 18 opinion in the overall wearable market?</p> <p>19 A. Well, when I look at wearables as 20 a whole, I might say that wrist bands have 21 been successful in various forms or other. 22 So maybe 20 or 30 times as much.</p>
<p style="text-align: right;">Page 19</p> <p>1 Let's go to paragraph 170 of your 2 declaration.</p> <p>3 Now the last line there says, 4 "Moreover, Oura has only sold [REDACTED] 5 units over seven years which is hardly an 6 indicator of commercial success."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. In your opinion, what is the unit 10 numbers that have to be sold to be 11 considered a commercial success?</p> <p>12 A. Well, the relevant category here 13 is wearables. And you will see that 14 actually, paragraph 170 is part of -- I 15 have to get the levels correct so I am 16 going back to the part of 17 Section III(B)(2). "Wearable rings 18 represent a tiny share of the overall 19 wearables market."</p> <p>20 So in the context of that -- and 21 that begins with a -- an analysis of the 22 wearables market as a whole. And at</p>	<p style="text-align: right;">Page 21</p> <p>1 Think of it as being at least a 2 significant percentage. Something that you 3 could see on a chart.</p> <p>4 Q. When you are referring to --</p> <p>5 A. Rather than it being a line so 6 narrow that you couldn't actually see it as 7 a segment of the wearables market as a 8 whole.</p> <p>9 Q. So if I understand you correctly, 10 it's not the units that you are looking at.</p> <p>11 You are looking at the relevant 12 market share. Is that fair, or am I 13 misunderstanding your position?</p> <p>14 A. In this context, because if we 15 are looking at this as one of the options, 16 which it is, of -- within the wearables 17 market as a whole, it's turned out to be 18 really extraordinarily small and relegated 19 to some rather specific use cases.</p> <p>20 Q. Why did you consider this Oura in 21 relationship to the overall wearable market 22 as opposed to the subset smart ring</p>

<p style="text-align: right;">Page 22</p> <p>1 wearable market?</p> <p>2 A. Because nobody starts out with</p> <p>3 the view that what I have to have is a</p> <p>4 smart ring.</p> <p>5 People start out trying to</p> <p>6 achieve some function, such as to track</p> <p>7 their sleep or monitor their health. And</p> <p>8 then there are a number of modalities by</p> <p>9 which that can be accomplished.</p> <p>10 So foundationally, if I am trying</p> <p>11 to use a phrase, you know, "get a</p> <p>12 particular job done," the job isn't wear a</p> <p>13 ring. The job is track my sleep.</p> <p>14 So from that perspective, we have</p> <p>15 got to consider the range of choices that</p> <p>16 are open to the consumers. When I adopt</p> <p>17 that perspective, and I look at the</p> <p>18 choices, there are two ways of doing sleep</p> <p>19 tracking. One of them is wearables. The</p> <p>20 other one is nonwearable sleep trackers.</p> <p>21 And in this particular context</p> <p>22 for it to have been a significant</p>	<p style="text-align: right;">Page 24</p> <p>1 The point more broadly being for</p> <p>2 it to have been a significant commercial</p> <p>3 success, you would want it to have achieved</p> <p>4 the sort of success -- or at least</p> <p>5 something approaching that Apple has</p> <p>6 achieved with the Apple watch. Another</p> <p>7 wearable. And in many senses, a</p> <p>8 competitor.</p> <p>9 Q. Well, there is orders of</p> <p>10 magnitudes of size difference between Apple</p> <p>11 and Oura.</p> <p>12 Would you agree?</p> <p>13 A. Yes, reflecting the lack of</p> <p>14 commercial success of smart rings and Oura.</p> <p>15 Q. Are you familiar with Tesla?</p> <p>16 A. Yes.</p> <p>17 Q. Tesla makes electronic vehicles,</p> <p>18 correct?</p> <p>19 A. Yes. It also makes some other</p> <p>20 products as well, such as Powerwalls.</p> <p>21 Q. Tesla is part of the broader</p> <p>22 vehicle market, correct?</p>
<p style="text-align: right;">Page 23</p> <p>1 commercial success, I would have expected</p> <p>2 it to command a significant portion of the</p> <p>3 market for people to say, do you know what,</p> <p>4 rings are actually the right way to do this</p> <p>5 in general. That hasn't happened.</p> <p>6 Q. What about -- let's look at the</p> <p>7 smart wearable ring market.</p> <p>8 Would you agree that Oura is at</p> <p>9 least a leader in that subset category of</p> <p>10 wearable devices?</p> <p>11 A. You are sort of inverting things</p> <p>12 there. I wouldn't agree with the</p> <p>13 categorization.</p> <p>14 Q. So you would completely dismiss a</p> <p>15 subcategorization entirely. Is that right?</p> <p>16 A. When you describe it as the smart</p> <p>17 ring marketplace, you can't look at it in</p> <p>18 isolation. If we are looking at the share</p> <p>19 that Oura has in smart rings, which is a</p> <p>20 particular category of wearables, then it</p> <p>21 has significant share within that very</p> <p>22 narrow category.</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Yes.</p> <p>2 Q. So in determining whether or not</p> <p>3 Tesla is a commercial success, would you</p> <p>4 look at it as a broader vehicle market, or</p> <p>5 a subset electric vehicle market or a</p> <p>6 combination of both?</p> <p>7 A. I would look at it first and</p> <p>8 foremost as a broader vehicle market. And</p> <p>9 it's interesting to note that in that</p> <p>10 context, Tesla is a demonstrated success.</p> <p>11 Back in 2021 when I was doing</p> <p>12 some work with BMW, it was a very</p> <p>13 interesting session working with their top</p> <p>14 250 leaders at which the question of</p> <p>15 whether or not Tesla was a success came up.</p> <p>16 And at the time to the shock and</p> <p>17 disbelief of one of the members of the BMW</p> <p>18 cohort who were in the room, we showed that</p> <p>19 the Tesla Model 3 was the highest selling</p> <p>20 individual car in the United States and had</p> <p>21 just reached that milestone in Germany.</p> <p>22 So in the context of the broader</p>

<p style="text-align: right;">Page 26</p> <p>1 marketplace, yes. Not at least because if 2 you look at what's been going on with 3 electric cars, you see quite different 4 mixes in the overall vehicle market in 5 different places, and market share of 6 electric cars, which have a particular mode 7 of transportation of engine, rise and fall. 8 So you can only consider electric 9 cars in the context of the overall 10 marketplace. 11 Q. And in your opinion -- sorry, go 12 ahead. 13 Were you done? 14 A. I think the Tesla example is 15 completely consistent with my observations 16 here that smart rings have commanded a tiny 17 square. Smart rings are the hydrogen cars 18 of wearables. 19 There are so few hydrogen cars 20 that the latest attempts have been 21 abandoned. 22 Q. So going back to the significant</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. You mentioned the 2021 meeting 2 with the BMW and the leaders. 3 In your opinion, did Tesla become 4 a commercial success in 2021 or at any 5 point earlier than that? 6 A. Over the -- well, it depends. 7 When I look at the car market, the 8 segmentation that actually reflects the way 9 in which consumers buy stuff, is typically 10 one by price point. 11 So in the first way, which 12 reflects what people are looking for, the 13 job they want to get done, if you like, 14 their underlying motivation for purchase 15 and the range of options that they 16 consider. 17 So the Model S was an unequivocal 18 success within the luxury car market -- 19 luxury car segment of the car market as a 20 whole. The Model 3 was then an unequivocal 21 success. Not just in the mid-range premium 22 tier, but in the mid-range market as a</p>
<p style="text-align: right;">Page 27</p> <p>1 commercial success, you are not looking at 2 just the units by themselves. 3 Is that correct? 4 A. That is one criteria, but I think 5 here, this particular section, which I 6 think I gave you, III(B)(2), whatever it 7 was, which begins at paragraph 167, 8 highlights the fact that wearable rings 9 have completely failed to command a 10 significant share of the overall wearables 11 market. 12 If as a product they had been 13 really great for a large number of people, 14 then they could have done so. Electric 15 cars, on the other hand, do now command a 16 significant share of the market as a whole, 17 particularly in countries such as Norway 18 and China. 19 And when you look at an overall 20 world picture, you will see that electric 21 vehicles have come to command a significant 22 share.</p>	<p style="text-align: right;">Page 29</p> <p>1 whole. 2 So it surpassed, for instance, 3 the other next two best selling mid-range 4 vehicles. Its sales surpassed the Toyota 5 -- it's not the Corolla -- the Camry -- and 6 the Honda Accord, which had been doing for 7 first and second place in the United 8 States. 9 The Model 3 passed that. That's 10 unequivocal success. 11 Q. You mentioned that the Model S 12 being the unequivocal success within the 13 luxury car market. 14 In that case, why did you reduce 15 the segment of the market? 16 A. So I actually said the luxury car 17 segment. Not the luxury car market. 18 There is a -- if you look, the 19 relevant framework for thinking about this 20 is evaluating the choices that consumers 21 have open to them, and looking at what 22 drives their buying preferences.</p>

<p style="text-align: right;">Page 30</p> <p>1 Relevant framing in that case is, 2 am I trying to buy a car at all, and do I 3 want my car to have certain 4 characteristics. The luxury car segment of 5 the market is a successful segment of the 6 market. 7 In Japan, there is a segment of 8 the market called "mini cars," which is a 9 successful segment of the market in Japan 10 and completely nonexistent in the United 11 States. So it depends upon what you are 12 looking at. 13 You introduced the example of 14 Tesla, was it an unequivocal success in the 15 luxury car segment of the overall car 16 market? Now, yes, there is some 17 cross-substitution between those where 18 people choose amongst them. 19 In this case, the critical point 20 is smart rings have failed to command 21 anything other than a miniscule share as a 22 segment of the wearables market as a whole.</p>	<p style="text-align: right;">Page 32</p> <p>1 unit shipments or value share, it's -- it 2 has -- that category has failed -- that 3 product category has failed to win 4 significant share. 5 Q. So it is your opinion that the 6 smart ring product category itself has 7 failed. Is that correct? 8 A. No. Not failed absolutely, but 9 it has not achieved significant commercial 10 success. It has not achieved no commercial 11 success whatsoever. 12 Demonstrably, Oura sells some 13 tens of thousands of products. But when 14 you put it in the context of the people who 15 are looking for wearable solutions for 16 health monitoring, it is arguably a 17 failure. 18 Q. Let me restate that question to 19 align with your previous answer. Okay? 20 A. Certainly. 21 Q. Is it your opinion that the smart 22 ring product category itself has not</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. When you say, "The critical point 2 is smart rings have failed to command, 3 wearable market as a whole," your position 4 is that it's not just Oura Ring that has 5 failed, it's the entire -- the smart ring 6 market has failed. 7 Is that correct? 8 A. No. Markets don't fail. Sorry. 9 A market is where a product meets 10 a customer. Markets happen. They occur. 11 So as a product category as a 12 whole, smart rings, which is the only 13 product category within which Oura offers 14 physical products -- and it's an important 15 distinction because to the extent that some 16 of Oura's commercial success comes from 17 related applications or services, there is 18 no nexus between that and the physical 19 ring. Let alone the patented aspects of 20 the physical ring. 21 So that clarification is 22 important. But from the point of view of</p>	<p style="text-align: right;">Page 33</p> <p>1 achieved significant commercial success, 2 correct? 3 A. Yes. 4 Q. And in order for you to consider 5 the product category for any one company to 6 have achieved significant commercial 7 success, they would have to rise to the 8 level of, say, Apple's smart watch; is that 9 correct? 10 A. No. 11 Q. You made a reference earlier to 12 Apple. If the product was a commercial 13 success, it would reach the levels of Apple 14 -- I am not trying to put testimony -- 15 misstate your testimony but -- 16 A. I believe you are misrepresenting 17 my testimony. I think I phrased it or I 18 certainly meant to phrase it the other way 19 around. That had it risen to the level of 20 Apple's success with the Apple watch, then 21 it would have been a significant success. 22 It is possible that it could have been a</p>

<p style="text-align: right;">Page 34</p> <p>1 significant success without fully attaining 2 the level of sales that Apple itself has 3 achieved. 4 Q. So in your opinion, in order for 5 Oura to have reached significant commercial 6 success, they would have needed to reach at 7 least the level of Apple's success with the 8 Apple watch; is that correct? 9 A. No. I have just -- I believe I 10 have been asked that question and answered 11 it, but I will restate it. 12 Apple's watch has been a 13 significant commercial success within a 14 wearables category that has hundreds of 15 millions of units. It sells tens of 16 millions of units and has a significant 17 presence. 18 In order to have had significant 19 success, it would have had to command much 20 greater than [REDACTED] market share. 21 Q. [REDACTED] the overall 22 wearable market share, correct?</p>	<p style="text-align: right;">Page 36</p> <p>1 Heritage or the Gen 2 Horizon. I am 2 looking around page 48 and my view is that 3 this growth pattern reflects Everett 4 Rogers' modeling of the diffusion of 5 innovations, which is the seminal work on 6 how new product adoption expands over time. 7 So it's no more than you would 8 have expected for a product category with 9 limited appeal to customers and limited 10 commercial success. It's quite unlike, for 11 instance, the growth pattern and the scale 12 of the growth that you saw -- to take a 13 different recent example with GPT 3 and 14 GPT 4. 15 Q. So looking at figure 57 of your 16 declaration, when you say you were not 17 impressive -- when Oura's sales of Gen 3 18 and Gen 4 rings were not impressive, you 19 were just not wowed by those numbers. 20 Is that fair? 21 MR. KAPPOS: Object to form. 22 A. It goes beyond that. I think,</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Yes. 2 Q. In paragraph 159 of your 3 declaration, on page 95, you also list Oura 4 sales of Gen 3 and Gen 4 rings are not 5 "Impressive." 6 Do you see that? 7 A. Yes. 8 Q. Can you define what is 9 impressive? 10 A. You look at them and go, wow. I 11 go, okay. A bit better, following what is 12 typical of a relatively slow rising -- 13 well, actually, not even typical. I think 14 it's page 54. So I would say -- that takes 15 it through September -- there is a chart I 16 have in here which is fiscal 2024 versus 17 fiscal 2025, but it's sort of illustrated 18 by Figure 57. So there was an increase. 19 You added another product to the portfolio. 20 It had some increased accuracy. It's 21 impossible to tell whether it came from a 22 boost in sales to the Gen 4 or the Gen 3</p>	<p style="text-align: right;">Page 37</p> <p>1 let me clarify. I will give you counter 2 examples, which I regard as having been 3 impressive. 4 You may be familiar -- well, 5 then, again, you may not, but I am 6 intimately familiar with what happened 7 between June or July of 2008 -- late 2008 8 and 2010. Basically, over the course of 9 just two years, the whole of the cell phone 10 market in the developed world flipped. And 11 it went from being feature phones or dumb 12 phones to being about smartphones with 13 large touch screens and apps were 14 integrated into that. That was impressive, 15 that was, wow, GPT 3, GPT 4, wow, those 16 were striking successes. The smart ring 17 product category, it's an interesting 18 little niche. It's growing although it's 19 not clear that it's growing very fast or 20 very much. 21 BY MR. VIDWAN: 22 Q. So going back to the question of</p>

<p style="text-align: right;">Page 38</p> <p>1 impressive, and I am on paragraph 159 2 again, I just want to understand. So you 3 explained a few examples. It's either it's 4 a significant rise in numbers or a quick 5 flipping up like what happened between 2008 6 and 2010. In a quick short period, there 7 was enough rise. 8 Is that about right or am I 9 misunderstanding your testimony? 10 A. Those are certainly 11 representative indications of what would 12 have been impressive. They are real-world 13 examples. And I was using them to 14 highlight the sort of characteristics. 15 Both cases they demonstrated with GPT 4, 16 the de novo adoption on the basis of 17 academic diffusion, which is merely knowing 18 about it leads -- having information about 19 a product leads to adoption of it -- of 20 generative pre-trained transformative large 21 language models or the radical 22 cross-substitution within an established</p>	<p style="text-align: right;">Page 40</p> <p>1 time. It would not have been technically 2 feasible to do this a few years before that 3 and they also faced limited competition. 4 It turned out that unlike sometimes -- what 5 sometimes happens where people pour into a 6 market segment on the belief that it will 7 expand enormously and indefinitely. That 8 didn't happen in this segment. People 9 didn't see the utility so it faced limited 10 competition. It operated more or less 11 under the radar. 12 Q. So is it your opinion that Oura 13 was just fortunate to introduce a product 14 at the right time that met the consumers' 15 need at that time that it was needed? Is 16 that correct? 17 A. No. You are misrepresenting what 18 I have to say here and which I expand on 19 subsequently. So if we want to deal with 20 this, we should go to the relevant section, 21 which is Section IV, I believe in there 22 which begins on page 107. Wrist worn</p>
<p style="text-align: right;">Page 39</p> <p>1 product category. So if smart rings had 2 the sort of impact that smartphones had in 3 the cellular marketplace relative to 4 wearables as a whole, that would have been 5 impressive. [REDACTED] -- how 6 many years is it -- a decade -- yes, meh. 7 Q. Also on paragraph 159, number 5 8 bullet point -- number 4, rather, sorry. 9 It says, "Oura benefitted from 10 serendipitous timing." 11 Do you see that? 12 A. Yes. Oura benefitted from 13 serendipitous timing. 14 Q. Can you explain what you mean by 15 serendipitous timing and how Oura benefitted 16 from it? 17 A. That, serendipitously, the 18 founders chose to launch product in this 19 product category in a way that created the 20 foundation for success as it has achieved, 21 which flowed from -- they happen to some 22 extent in the right place at the right</p>	<p style="text-align: right;">Page 41</p> <p>1 wearables had established the awareness of 2 the wearable technology broadly speaking, 3 which is the relevant market, and we had 4 seen a variety of different form factors, 5 some with bigger displays, some without 6 displays, some worn on one part of the 7 body. Some worn on another part of body, 8 but wearables had emerged and actually 9 ironically because of the innovations that 10 were taking place in smartphones, which led 11 to both a radical miniaturization of 12 components and ongoing improvements in the 13 miniaturization, it happened to be able to 14 put the first generation and second 15 generation product together. 16 Critically, Oura has not asserted 17 that there is a nexus between those early 18 products and the patents. 19 Q. We will get to that part as well, 20 but going to the serendipitous timing, I 21 just want to understand. Your position is 22 that Oura was just at the right time and</p>

<p style="text-align: right;">Page 42</p> <p>1 there was no other competition at that time 2 in at least the smart ring product 3 category, and that's why they benefited. 4 Is that correct? 5 A. No. That's not what I say. You 6 referred me to paragraph 159, which 7 captures the two elements of it. Not that 8 there was no competition. And I weight 9 what was the right phrase to use -- that 10 adjective "limited." We considered a 11 variety of options to capture what I 12 thought best reflected that. So it 13 benefited from serendipitous timing. Other 14 wearable companies had developed the 15 technology, and they had created a market 16 for wearables. It was not a pioneer in the 17 wearables market as a whole. The 18 technologies which were readily available 19 then created the possibility of a smaller 20 form factor. There were a variety of 21 people using these technologies in rings 22 and in other smaller form factors. And it</p>	<p style="text-align: right;">Page 44</p> <p>1 frame. 2 Would you agree? 3 A. Well, earlier than Oura. 4 Q. Even earlier than Oura, yes, by 5 at least one year, correct? 6 A. Give or take. I don't know. 7 It's 2012 or 2013. In terms of foundation 8 dates, I need to check the exact dates. 9 2013 is the kick starter. It was actually 10 a couple of years earlier into the market. 11 Foundation dates differ by a year. If you 12 look at paragraph 176, the first generation 13 was launched in March 2015. If you look at 14 the McLear reference, it shows that the 15 kick starter was for the McLear ring was 16 2013, a couple of years ahead. The 17 foundation date for McLear was 2012, and I 18 believe the foundation date for Oura was 19 2013. So McLear is founded in 2012. It 20 launches its products in 2013. Oura is 21 founded in 2013 and launches its products 22 in 2015. So a couple of years later.</p>
<p style="text-align: right;">Page 43</p> <p>1 benefited from limited competition as an 2 early entrant in the smart ring market 3 segment. Things could have played out 4 really quite differently if it had faced 5 significant competition at the outset. 6 Q. I think you kind of refer to the 7 other rings as well around that time. I am 8 on page 124 of your declaration. You refer 9 to the McLear NFC ring. 10 Do you see that? 11 A. I do. 12 Q. You said it was founded in 2012? 13 A. Yes. Sorry, which paragraph are 14 you at? 15 Q. 205, the first line, you said 16 McLear was founded in 2012? 17 A. 205. Sorry. 18 Q. Paragraph 205. Page 124. 19 A. Yes. 20 Q. Now, McLear was, I guess, right 21 around the time of Oura in 2013, it seems 22 like, right, kind of close enough in time</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Okay. But generally, around the 2 same time frame, give a year or two, right? 3 A. No. I am not going to go with 4 generally around the same timeframe. We 5 are talking about patents and we are 6 talking about prior art, and the -- "would 7 it be that we -- well, hey, I am okay if it 8 was generally around the same time." And 9 the reason I highlight this is if you go 10 back to one of my earlier discussions, I 11 highlight the fact that the McLear ring 12 established what is known when you are 13 evaluating technologies as the dominant 14 design. And the reason I am highlighting 15 that is there is often a lot of sort of 16 thrashing around in the early days of the 17 establishment of a product category about 18 what is the right form factor, and how do 19 we go do it. 20 I will use a concrete example. 21 One of the things that was important about 22 the Model T in automobiles was it was the</p>

<p style="text-align: right;">Page 46</p> <p>1 first car to arrange the combination of the 2 steering wheel, brakes, and the pedal 3 configuration which turned out to be, 4 quote-unquote, ultimately the engine in 5 front, driving wheels in the back. 6 The Apple iPhone established what 7 the dominant design was for smartphones. 8 There were some interesting variations from 9 the likes of Motorola and from HTC with the 10 G-1 in the early days. But with the launch 11 of Samsung's original Galaxy S, basically 12 everyone went, you know what -- well, and 13 HTC's Magic, it's kind of a big slab of 14 glass, and we are not going to have 15 sliders, we are not going to have track 16 pads, we are not going to have keyboards 17 that pop out. We're not going to have any 18 of those things. That's when the dominant 19 design became established. 20 McLear established the dominant 21 design, and we are going to have a -- in 22 the wearable smart ring product category,</p>	<p style="text-align: right;">Page 48</p> <p>1 failed, but when I look at what the product 2 category within which -- the use case which 3 it was addressing and the product category 4 it was performing, it wasn't as successful. 5 It was addressing a related use case. 6 Maybe there just wasn't enough demand for 7 that use case. I haven't peeled apart the 8 specifics for the counter factual of 9 specifically why McLear succeeded or 10 failed. 11 Q. Do you know if the McLear NFC 12 ring had a battery? 13 A. Not off the top of my head. I 14 would have to check what my notes 15 suggested. 16 Q. Check and let me know. 17 A. (Witness reviewing document). 18 I don't recall one way or 19 another. 20 Q. Paragraph 214, you refer to HB 21 ring by The Touch. 22 Do you see that?</p>
<p style="text-align: right;">Page 47</p> <p>1 it's going to have a wedding ring like form 2 factor. 3 Q. Did you analyze the McLear NFC 4 ring physically? 5 A. You mean, did I obtain a physical 6 copy and disassemble it? 7 Q. Correct. 8 A. No. 9 Q. Do you know if McLear NFC ring is 10 still around today? 11 A. I don't know one way or the 12 other. The relevance in this case is that 13 it preceded Oura and it established the 14 wedding ring -- if you want to call it 15 that, form factor. A thick band rather 16 than a narrow band. 17 Q. The point I am trying to get at 18 is then why did McLear NFC did not have the 19 serendipitous timing success that Oura did 20 that you claim? 21 A. It didn't -- I don't know the 22 details of the exact reasons why McLear</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Yes. 2 Q. And that one was released in 2016 3 after 2 1/2 years of product development. 4 Do you see that? 5 A. Yes. 6 Q. Do you know one way or the other 7 how many rings -- HB rings sold? 8 A. No. Not off the top of my head. 9 Q. In your opinion, was HB ring a 10 commercial success? 11 A. It doesn't seem to have been a 12 thriving commercial success. I did confirm 13 yesterday out of curiosity whether or not 14 it was still available. It is. 15 Q. Do you know how many rings they 16 have sold still? 17 A. Not off the top of my head. 18 Q. And you are not here offering any 19 opinions that HB Ring was a commercial 20 success, correct? 21 A. Correct. I am offering an 22 opinion about whether or not Oura was a</p>

<p style="text-align: right;">Page 50</p> <p>1 significant commercial success.</p> <p>2 Q. How come HB -- strike that.</p> <p>3 In your opinion, why did HB Ring</p> <p>4 -- did not benefit from a serendipitous</p> <p>5 timing?</p> <p>6 A. I don't know. I haven't</p> <p>7 considered the hypothetical. And the</p> <p>8 timing is different. It came later.</p> <p>9 Q. About how much later?</p> <p>10 A. It's a year or so later. It's</p> <p>11 still in the marketplace, and it's</p> <p>12 addressing a different rather niche use</p> <p>13 case. The job it purports to do is monitor</p> <p>14 your heart rate and share it. That's an</p> <p>15 even narrower use case. It's restricted to</p> <p>16 people who are couples, both of whom are</p> <p>17 comfortable with wearing a smart ring as a</p> <p>18 particular modality of wearable. That's a</p> <p>19 pretty small market, I think -- market</p> <p>20 segment.</p> <p>21 Q. Go to paragraph 120 of your</p> <p>22 declaration. Is it your opinion that Oura</p>	<p style="text-align: right;">Page 52</p> <p>1 (Question read)</p> <p>2 BY MR. VIDWAN:</p> <p>3 Q. I can remove the double negative</p> <p>4 for you.</p> <p>5 A. You do not dispute that the Gen 3</p> <p>6 Horizon is not a commercial embodiment?</p> <p>7 Now, I am sorry. I am still confused.</p> <p>8 Q. Sure. Let me remove the double</p> <p>9 negatives for you. Would that work for</p> <p>10 you?</p> <p>11 A. That would be helpful.</p> <p>12 Q. Do you dispute that Oura Ring</p> <p>13 Gen 3 Horizon is a commercial embodiment of</p> <p>14 the '178 Patent?</p> <p>15 A. I do not dispute that the Gen 3</p> <p>16 Horizon and the Oura Ring Gen 4 practice</p> <p>17 those claims.</p> <p>18 Q. Go to paragraph 117 of your</p> <p>19 declaration. You refer to Oura Ring Gen 1</p> <p>20 and Gen 2, both Heritage and Balance.</p> <p>21 Do you see that?</p> <p>22 A. I do.</p>
<p style="text-align: right;">Page 51</p> <p>1 Ring Gen 3 Horizon does not practice any</p> <p>2 element of Claim 1 of the '178 Patent?</p> <p>3 MR. KAPPOS: Object to form.</p> <p>4 A. I am sorry. Could you restate</p> <p>5 the question? It sounded like it was a</p> <p>6 double-negative in there.</p> <p>7 BY MR. VIDWAN:</p> <p>8 Q. Sure. I apologize for that. You</p> <p>9 do not dispute that Oura Ring Gen 3 Horizon</p> <p>10 is not a commercial embodiment of the '178</p> <p>11 Patent, correct?</p> <p>12 MR. KAPPOS: Object to form.</p> <p>13 A. Would the court reporter read the</p> <p>14 question back to me, please, rather than</p> <p>15 asking you to ask it again? I am sorry. I</p> <p>16 am trying to -- hang on -- is it okay if I</p> <p>17 write -- make a note?</p> <p>18 MR. VIDWAN: Sure.</p> <p>19 THE WITNESS: Go ahead, please.</p> <p>20 Would the court reporter mind reading</p> <p>21 the question back to me? I want to</p> <p>22 make sure I answer it accurately.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Are you offering any opinion one</p> <p>2 way or the other whether Oura Ring Gen 1 is</p> <p>3 a commercial embodiment of the '178 Patent?</p> <p>4 A. No. I am not offering an opinion</p> <p>5 myself one way or another. I note,</p> <p>6 however, that the patent owner has not</p> <p>7 asserted that they do embody it. At least</p> <p>8 as far as I understand from the perspective</p> <p>9 of secondary indicia of commercial success.</p> <p>10 They are asserting that it's related to the</p> <p>11 features that are embodied in the Gen 3</p> <p>12 Horizon and the Oura Gen 4, if my</p> <p>13 understanding of their representations is</p> <p>14 incorrect, please correct me.</p> <p>15 Q. I think you have it right. Are</p> <p>16 you offering any opinion one way or another</p> <p>17 whether Oura Ring Gen 2, either Heritage or</p> <p>18 Balance, is a commercial embodiment of the</p> <p>19 '178 Patent?</p> <p>20 A. I am not offering an opinion on</p> <p>21 that. My understanding, as I just said, is</p> <p>22 that the relevant analysis here in this</p>

14 (Pages 50 to 53)

Page 54

1 particular context is related to the Gen 3
2 Horizon and the Oura Ring 4, which the
3 patent owner is asserting do practice those
4 claims and where it is asserting, wrongly
5 in my belief, that their success derived in
6 the nexus between those claims and those
7 products.

8 **Q. And is your opinion the same for**
9 **the '702 patent as to whether or not you**
10 **are offering any opinion one way or the**
11 **other whether Oura Ring Gen 1 or Gen 2**
12 **practice the claims of the '702 patent?**

13 A. Yes, my opinion is the same with
14 regard to the '702. And the caveat that
15 the relevant analysis, as I understand it,
16 in this particular case, is related to
17 Gen 3 and Gen 4 -- Gen 3 Horizon and Gen 4.

18 **Q. Going to the next paragraph, 118,**
19 **in addition the figure that's above that.**

20 **Do you see that?**

21 A. Yes.

22 **Q. You said, "By the launch of Oura**

Page 56

1 A. And I note that there were --
2 that Gen 3 Heritage had some commercial
3 success. Some. Not zero. Not enormously
4 significant in the overall commercial
5 success. And it is impossible to determine
6 what, if any, impact Gen 3 had between the
7 launch of -- Gen 3 Horizon had between the
8 launch of Gen 3 Horizon and Gen 4 or indeed
9 after.

10 **Q. That's fair. I just want --**
11 **because in a different portion of your**
12 **report, you did recognize that Oura Ring**
13 **Gen 3 Heritage was released in 2021. I**
14 **just want to make sure I am understanding**
15 **this correctly. There's no gotcha here.**

16 **So you agree with me, then, that**
17 **figure -- when you say Oura had sold**
18 **[REDACTED] by the time Oura Gen 3 was**
19 **released in September '22, there are some**
20 **-- that total does account for at least**
21 **some Oura Gen 3 Heritage sales as well,**
22 **correct?**

Page 55

1 **Gen 3 Horizon in September 2022, Oura had**
2 **already sold [REDACTED]"**

3 **Do you see that?**

4 A. I do.

5 **Q. You do --**

6 A. Hang on. You only read part of
7 the sentence.

8 **Q. Sure. I can read the rest of it.**
9 **"Despite the fact that Oura does not**
10 **provide any analysis on whether Oura Ring**
11 **Gen 1 and Gen 2 practice these claims or**
12 **argument that they did so."**

13 A. Thank you. I would not want the
14 record to show an incomplete sentence.

15 **Q. Absolutely. I apologize for**
16 **that.**

17 **So going back to the Oura Gen 3**
18 **in September 2022, you do understand that**
19 **Oura Ring Gen 3 Heritage was released in**
20 **2021, correct?**

21 A. I do, indeed.

22 **Q. So in your calculations --**

Page 57

1 MR. KAPPOS: Object to form.

2 A. I can't say one way or another,
3 but it would be not unreasonable to suspect
4 there were at least some Gen 3 sales in
5 there. We don't have the data.

6 BY MR. VIDWAN:

7 **Q. And talking about the data you**
8 **are not disputing the underlying data that**
9 **was provided here by Oura, correct?**

10 A. To the extent that the data I
11 have -- I am not asserting that they have
12 falsified the data, if that's what you mean
13 by that.

14 **Q. Right.**

15 A. No.

16 **Q. So your only dispute is with**
17 **Andrew Clark's analysis of that data. It's**
18 **not the underlying data itself.**

19 **Is that fair?**

20 A. Well, to the extent that I have
21 -- I am not setting out to dispute his
22 analysis. I am setting out to do my

15 (Pages 54 to 57)

Page 58

1 analysis, and I reach quite different
2 conclusions from him, but my starting point
3 was what has Dr. Clark -- Mr. Clark?

4 **Q. Mr. Clark.**

5 A. And do I agree or disagree. I
6 started out and my brief was to provide an
7 opinion related to the secondary indicia of
8 obviousness. My interpretation and careful
9 analysis and evaluation of the data leads
10 me to a completely different conclusion
11 from Mr. Clark, but it's not, Hey, I am
12 trying to just tear Clark apart. I am
13 forming my own opinion.

14 **Q. Two reasonable people can come to**
15 **two different conclusions. I get that.**
16 **But I just wanted to make sure that the**
17 **dispute is not with the underlying data.**
18 **It's just with how that data is being**
19 **interpreted by two different people.**

20 A. Except to the extent that my --
21 the data, for whatever reason, obfuscates
22 what happened.

Page 59

1 **Q. Do you want to take a break here?**
2 **We have been going close to an hour -- not**
3 **a full hour.**

4 **Does that work for you?**

5 A. Sure.

6 THE VIDEOGRAPHER: The time is
7 9:57 a.m. Going off the record.
8 (Recess)

9 THE VIDEOGRAPHER: The time is
10 10:07 a.m. Back on the record.

11 BY MR. VIDWAN:

12 **Q. Mr. Davies, if you can go to**
13 **paragraph 20 of your report?**

14 A. Paragraph 20.

15 **Q. Do you see where it says, "The**
16 **products' features or characteristics that**
17 **are purported to embody the claims do not**
18 **differentiate the products and do not**
19 **determine its commercial performance or**
20 **success"?**

21 **Do you see that?**

22 A. I do.

Page 60

1 **Q. In your opinion, do the patented**
2 **features provide any contribution to the**
3 **commercial performance or success of Oura**
4 **Ring?**

5 MR. KAPPOS: Object to form.

6 A. I don't know that I have
7 considered that question. That's sort of
8 the converse. So my point here is, do they
9 make it different? Does their existence
10 enable it to function? Yes. But that's
11 sort of almost sort of a truism, like a
12 wearable device without the sensors or
13 other aspects of it wouldn't be a wearable
14 device. So do they play any role? You
15 mean their mere existence enables the
16 product to work. My key point here is they
17 do not differentiate it.

18 BY MR. VIDWAN:

19 **Q. What do you mean by, "they do not**
20 **differentiate it"? Can you elaborate a**
21 **little bit?**

22 A. They don't make it distinctly

Page 61

1 different from -- in the eyes of consumers.
2 **Q. In your opinion, do the patented**
3 **features -- strike that.**

4 **Is it your opinion that in order**
5 **to establish commercial success, the**
6 **patented invention has to be solely**
7 **responsible for the demand?**

8 MR. KAPPOS: Object to form.

9 A. I am sorry. It's always the case
10 that a number of factors contribute to
11 demand. So my critical point here is that
12 there is no nexus between those features
13 and the degree or magnitude of commercial
14 success. They don't differentiate the
15 product. Are some of the features, which
16 are pretty obvious, necessary for the
17 product to function? Yes. But do the
18 claimed features differentiate it? No.

19 BY MR. VIDWAN:

20 **Q. Maybe it would be helpful to talk**
21 **about what is differentiating it, and you**
22 **touch on that a little bit in paragraph 21.**

16 (Pages 58 to 61)

<p style="text-align: right;">Page 62</p> <p>1 Let me know when you are there.</p> <p>2 A. Yes.</p> <p>3 Q. You say, "Conversely, the</p> <p>4 features and characteristics that Oura</p> <p>5 emphasizes about its products -- which</p> <p>6 influence customers' purchase decisions --</p> <p>7 are not claimed in these patents."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And you go on to say that, "In</p> <p>11 fact, there is no evidence that the market</p> <p>12 had any significant awareness of the</p> <p>13 patented technologies, or that it placed</p> <p>14 significant value on them," just to</p> <p>15 complete the record.</p> <p>16 A. Yes.</p> <p>17 Q. In your opinion, what are these</p> <p>18 unimportant -- strike that.</p> <p>19 In your opinion, what are the</p> <p>20 important unclaimed features and</p> <p>21 characteristics of the Oura Ring?</p> <p>22 A. Well, let's go to page 92,</p>	<p style="text-align: right;">Page 64</p> <p>1 made from titanium and the interior is</p> <p>2 round and the sensors are recessed.</p> <p>3 Q. So you listed -- other than the</p> <p>4 hardware, you listed sleep monitoring,</p> <p>5 which is on the app, the user experience</p> <p>6 and accuracy, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Any other that come to your mind</p> <p>9 that are important unclaimed features?</p> <p>10 A. These are the ones that are</p> <p>11 claimed, so there may be but what I was --</p> <p>12 my point here is there is no evidence that</p> <p>13 the market had any significant awareness of</p> <p>14 the patented technologies. Certainly Oura</p> <p>15 is not emphasizing them. Oura is not</p> <p>16 publicizing them or did place significant</p> <p>17 value on them. The challenge here is the</p> <p>18 one of proving a negative. So we were</p> <p>19 unable to identify a review that spoke to</p> <p>20 the patented features.</p> <p>21 Q. So you can't definitively say</p> <p>22 that the consumer demand is being driven by</p>
<p style="text-align: right;">Page 63</p> <p>1 Section III -- Section III(D). Give me a</p> <p>2 moment.</p> <p>3 (Witness reviewing document).</p> <p>4 So as I set out in Section III(D)</p> <p>5 between page 92 and 94, paragraph 151</p> <p>6 through 158 inclusive, the features that I</p> <p>7 am talking about in paragraph 21 that it</p> <p>8 emphasizes are its health and wellness</p> <p>9 features, not the hardware. Not the shape</p> <p>10 or form of the hardware, indicating that</p> <p>11 the specific construction of the ring was</p> <p>12 less valuable than its digital health</p> <p>13 features in a 2015 interview, Petteri</p> <p>14 Lahtela, the CEO talked about the sleep</p> <p>15 monitoring and app features. But we are</p> <p>16 not discussing the patent. We are not</p> <p>17 discussing patents related to sleep</p> <p>18 monitoring per se or the app. Subsequent</p> <p>19 marketing in 2017 and its current marketing</p> <p>20 emphasize the app, the user experience and</p> <p>21 its accuracy, none of which are patented</p> <p>22 features. And all that has to say is it's</p>	<p style="text-align: right;">Page 65</p> <p>1 the app, the user experience and accuracy.</p> <p>2 Is that correct?</p> <p>3 A. In the absence of other evidence,</p> <p>4 I would pretty much definitively say it</p> <p>5 because that's what was being communicated</p> <p>6 to customers. I don't have anything else</p> <p>7 to say that its success is based on because</p> <p>8 there is no evidence. As it says, there is</p> <p>9 no evidence -- I maybe should have put</p> <p>10 whatsoever that the market was aware of the</p> <p>11 patented technologies or -- maybe I should</p> <p>12 have said any evidence that it placed</p> <p>13 significant value on them. We are trying</p> <p>14 to prove a negative, but we went looking</p> <p>15 for such evidence and we couldn't find any.</p> <p>16 We could find abundant evidence that says</p> <p>17 what consumers cared about was the sleep</p> <p>18 tracking, the measurements, the health and</p> <p>19 wellness data, the app.</p> <p>20 Q. How does the app get the data</p> <p>21 that it analyzes?</p> <p>22 A. It's connected over bluetooth.</p>

Page 66

1 **Q. With what device?**

2 A. With the ring. But the ring --
3 the question here is not about whether or
4 not the ring exists. We have agreed that
5 the ring demonstrably exists, but it's the
6 features and characteristics claimed in the
7 product. So, yes, it gets them from the
8 ring, but the features and characteristics
9 that are claimed in the patents are not
10 part of the differentiation in the eye of
11 the consumers, and they are present in
12 other devices.

13 **Q. So you would agree with me that**
14 **in order for the Oura app to be able to**
15 **provide users insights into their sleep**
16 **monitoring, it at least needs to connect**
17 **with Oura Ring itself in order to access**
18 **that data. Correct?**

19 A. Noting that these are not the
20 patented features, there needs to be some
21 form of connection at some point, yes. If
22 the data -- well, actually, no. You could

Page 68

1 analysis on it, and the data is coming from
2 a different source?

3 BY MR. VIDWAN:

4 **Q. Sure.**

5 A. That's certainly possible. I
6 don't know one way or another. There is
7 certainly instances of companies which
8 exist to -- which use third-party sensor
9 mechanisms and do better analysis on the
10 data or provide third-party applications
11 for electronic hardware.

12 A notable example, if you have
13 been following this, is in -- a notable and
14 current example with which I am familiar is
15 Sonos. You may or may not have a Sonos
16 system. They launched a new app. It
17 sucked. It was just terrible. It cratered
18 their stock price. It pissed all their
19 customers off. And there is a company
20 called Clic, C-L-I-C. And they sell an
21 app which connects with your Sonos system,
22 uses the same API which performs a much

Page 67

1 have implemented it differently. You could
2 have implemented it in a way in which all
3 of the feedback was provided on the ring
4 itself.

5 **Q. But Oura Ring does not have a**
6 **display to provide that feedback, correct?**

7 A. The Oura Ring does not. Maybe it
8 would have been much more successful had it
9 done so.

10 **Q. They still have time.**

11 A. Sorry?

12 **Q. I said they still have time,**
13 **hopefully. We will see. Maybe they will**
14 **wow you then.**

15 **In your opinion if Oura was to**
16 **provide the app by itself without the ring,**
17 **would Oura have been successful just as a**
18 **software company?**

19 MR. KAPPOS: Object to form.

20 A. You want me to consider the
21 hypothetical about -- we are just going to
22 take the data. We are going to do sleep

Page 69

1 better user experience and they are
2 doing very well. You are interacting
3 with and controlling with Sonos'
4 hardware.

5 **Q. Speaking of user experience, you**
6 **mentioned that, other than the ring, the**
7 **other aspects of unclaimed features are the**
8 **app, the user experience, and accuracy,**
9 **correct?**

10 A. Yes. Hang on. Well,
11 sleep tracking in the Ben Greenfield
12 interview.

13 **Q. I am sorry. What was that?**

14 A. Sleep tracking. In the second
15 sentence of paragraph 123 the Ben
16 Greenfield interview focused on sleep
17 tracking. So we have got sleep monitoring,
18 sleep tracking, the app, the user
19 experience, membership features and
20 accuracy.

21 **Q. The sleep monitoring and tracking**
22 **is being provided to the user in the app,**

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 correct?</p> <p>2 A. The information about it</p> <p>3 is being provided to the user in the app,</p> <p>4 yes.</p> <p>5 Q. And the membership feature is</p> <p>6 tied to the accessibility of those -- that</p> <p>7 analysis within the app, correct?</p> <p>8 MR. KAPPOS: Object to form.</p> <p>9 A. I'm not sure I understand the</p> <p>10 question. Could you clarify what you mean</p> <p>11 by "accessibility"?</p> <p>12 BY MR. VIDWAN:</p> <p>13 Q. Okay. What does a membership to</p> <p>14 Oura get you in terms of any insights?</p> <p>15 A. I would have to go check the</p> <p>16 details. Certainly, I -- I know that</p> <p>17 certain information is restricted if you</p> <p>18 don't have the app. I can't remember the</p> <p>19 exact details off the top of my head. I</p> <p>20 need to review my report and check. I note</p> <p>21 that other competitors don't require a</p> <p>22 subscription service to access the full</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. And when you are talking about</p> <p>2 this user experience, are you talking about</p> <p>3 in reference to the user experience</p> <p>4 relative to the app or something else?</p> <p>5 A. Relative to the app, yes.</p> <p>6 Q. And with respect to accuracy, can</p> <p>7 you elaborate a little bit on that? What</p> <p>8 do you mean by accuracy being an important</p> <p>9 feature?</p> <p>10 A. Well, I would need to look at</p> <p>11 Oura's current marketing. So on 155 --</p> <p>12 paragraph 155, there is a cite to 102 --</p> <p>13 this is relatively recent so it might still</p> <p>14 be there, but that site emphasized the</p> <p>15 accuracy of data measurement. I haven't</p> <p>16 quoted it verbatim but I need to go back</p> <p>17 and look at the Exhibit 1152.</p> <p>18 MR. VIDWAN: Can you pull up</p> <p>19 Exhibit 1152, please.</p> <p>20 (Petitioner Samsung Exhibit 1152,</p> <p>21 Presentation, six pages, was referenced</p> <p>22 for identification)</p>
<p style="text-align: right;">Page 71</p> <p>1 range of data that's available.</p> <p>2 Q. In your previous answer, you</p> <p>3 said, I know that certain information is</p> <p>4 restricted if you don't have the app?</p> <p>5 A. Sorry. If you don't have the</p> <p>6 subscription. I misspoke.</p> <p>7 Q. So with a subscription, you do</p> <p>8 get access to certain information in the</p> <p>9 app; is that fair?</p> <p>10 A. No. I would actually</p> <p>11 characterize it the other way around.</p> <p>12 Without the subscription, you don't get</p> <p>13 access to it.</p> <p>14 Q. Okay. You refer to user</p> <p>15 experience. Can you talk about what do you</p> <p>16 mean by "user experience"?</p> <p>17 A. How easy it is for customers to</p> <p>18 -- and users of it to interact with the</p> <p>19 functionality. You could have good or bad</p> <p>20 user experience. Something could be</p> <p>21 difficult to use or easy to use. Good user</p> <p>22 experience is both easy and powerful.</p>	<p style="text-align: right;">Page 73</p> <p>1 BY MR. VIDWAN:</p> <p>2 Q. Mr. Davies, you can direct him</p> <p>3 wherever you want to see this?</p> <p>4 A. Can we go down? This is just one</p> <p>5 page. Wow. That's hard to read.</p> <p>6 THE VIDEOGRAPHER: I also made it</p> <p>7 available to you if you want to refresh</p> <p>8 your page. Otherwise, you can direct</p> <p>9 me what page to go to.</p> <p>10 THE WITNESS: Okay. Let me do</p> <p>11 that.</p> <p>12 THE VIDEOGRAPHER: It's a</p> <p>13 six-page document.</p> <p>14 THE WITNESS: (Reviewing document).</p> <p>15 The third page says, "The finger</p> <p>16 provides the most accurate reading of</p> <p>17 your heart rate, blood oxygen levels,</p> <p>18 temperature, and more."</p> <p>19 (Reviewing document).</p> <p>20 BY MR. VIDWAN:</p> <p>21 Q. Do you have anything else you</p> <p>22 want to add before I ask a question? I</p>

<p style="text-align: right;">Page 74</p> <p>1 don't want to cut you off.</p> <p>2 A. Yes. That's the emphasis on the</p> <p>3 accuracy of the data.</p> <p>4 Q. So the accuracy of the data is</p> <p>5 coming from the ring form factor; is that</p> <p>6 correct?</p> <p>7 A. No.</p> <p>8 MR. KAPPOS: Object to form.</p> <p>9 A. No. They are making a different</p> <p>10 assertion. They're saying the most</p> <p>11 accurate data is coming from the finger --</p> <p>12 is available on the finger. There is a</p> <p>13 distinction. Here is where the most</p> <p>14 accuracy -- most accurate data is</p> <p>15 available. They haven't made the assertion</p> <p>16 that it's the ring form factor.</p> <p>17 BY MR. VIDWAN:</p> <p>18 Q. I see what you mean. That you</p> <p>19 can have different form factors, but as</p> <p>20 long as you are collecting that data from</p> <p>21 the finger, it provides that important</p> <p>22 claim feature.</p>	<p style="text-align: right;">Page 76</p> <p>1 THE VIDEOGRAPHER: Off the</p> <p>2 record. This marks the end of today's</p> <p>3 deposition. The time is 10:33 a.m.</p> <p>4 (Proceedings concluded at 10:33</p> <p>5 A.M. E.S.T.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 75</p> <p>1 Is that correct?</p> <p>2 A. Yes.</p> <p>3 MR. VIDWAN: We can take this</p> <p>4 down.</p> <p>5 Mr. Davies, I do not have</p> <p>6 any other questions for you. Thank</p> <p>7 you so much. I will turn over the</p> <p>8 witness.</p> <p>9 MR. KAPPOS: Could we take a</p> <p>10 ten-minute break?</p> <p>11 MR. VIDWAN: Sure.</p> <p>12 THE VIDEOGRAPHER: The time is</p> <p>13 10:26 a.m. Going off the record.</p> <p>14 (Recess)</p> <p>15 THE VIDEOGRAPHER: The time</p> <p>16 is 10:33 a.m. We are back on the</p> <p>17 record.</p> <p>18 MR. KAPPOS: We have no</p> <p>19 questions. I think we are done for the</p> <p>20 day.</p> <p>21 MR. VIDWAN: Thank you,</p> <p>22 Mr. Davies.</p>	<p style="text-align: right;">Page 77</p> <p>1</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK)</p> <p>4) ss.:</p> <p>5 COUNTY OF NEW YORK)</p> <p>6 I, Christina Diaz, a Certified</p> <p>7 Realtime Captioner, Registered Diplomate</p> <p>8 Reporter, Certified Realtime Reporter and</p> <p>9 Notary Public within and for the State of</p> <p>10 New York, do hereby certify:</p> <p>11 That MICHAEL DAVIES, the witness whose</p> <p>12 deposition is hereinbefore set forth, was</p> <p>13 duly sworn by me and that such deposition is</p> <p>14 a true record of the testimony given by such</p> <p>15 witness on August 14, 2025.</p> <p>16 I further certify that I am not</p> <p>17 related to any of the parties to this action</p> <p>18 by blood or marriage and that I am in no way</p> <p>19 interested in the outcome of this matter.</p> <p>20 Dated: August 17, 2025</p> <p>21</p> <p>22</p> <p>CHRISTINA DIAZ, RDR CRC CRR RMR CSR-NY/NJ CLR</p> <p>NCRA Registered Diplomate Reporter</p> <p>NCRA Certified Realtime Captioner</p> <p>NCRA Certified Realtime Reporter</p> <p>NCRA Registered Merit Reporter</p> <p>NYS Certified Shorthand Reporter</p> <p>Lic. 001046-1</p> <p>NJ Certified Shorthand Reporter</p> <p>Lic. 30X100244900</p> <p>Certified LiveNote Reporter</p>

Page 78

1 Michael Davies, c/o
2 O'MELVENY & MYERS LLP
3 2801 North Harwood Street, Suite 1600
4 Dallas, TX 75201
5
6 Case: Samsung Electronics Co., Ltd., et al. v. Ouraring, Inc.
7 Date of deposition: April 14, 2025
8 Deponent: Michael Davies
9
10 Please be advised that the transcript in the above
11 referenced matter is now complete and ready for signature.
12 The deponent may come to this office to sign the transcript,
13 a copy may be purchased for the witness to review and sign,
14 or the deponent and/or counsel may waive the option of
15 signing. Please advise us of the option selected.
16 Please forward the errata sheet and the original signed
17 signature page to counsel noticing the deposition, noting the
18 applicable time period allowed for such by the governing
19 Rules of Procedure. If you have any questions, please do
20 not hesitate to call our office at (202)-232-0646.
21 Sincerely,
22 Digital Evidence Group
Copyright 2025 Digital Evidence Group
Copying is forbidden, including electronically, absent
express written consent.

Page 80

1 Digital Evidence Group, LLC
2 1730 M Street, NW, Suite 812
3 Washington, D.C. 20036
4 (202)232-0646

ERRATA SHEET

8 Case: Samsung Electronics Co., Ltd., et al. v. Ouraring, Inc.
9 Witness Name: Michael Davies
10 Deposition Date: April 14, 2025
11 Page No. Line No. Change

Signature

Date _____

Page 79

1 Digital Evidence Group, L.L.C.
2 1730 M Street, NW, Suite 812
3 Washington, D.C. 20036
4 (202) 232-0646
5
6 SIGNATURE PAGE
7 Case: Samsung Electronics Co., Ltd., et al. v. Ouraring, Inc.
8 Witness Name: Michael Davies
9 Deposition Date: April 14, 2025
10
11 I do hereby acknowledge that I have read
12 and examined the foregoing pages
13 of the transcript of my deposition and that:
14
15 (Check appropriate box):
16 () The same is a true, correct and
17 complete transcription of the answers given by
18 me to the questions therein recorded.
19 () Except for the changes noted in the
20 attached Errata Sheet, the same is a true,
21 correct and complete transcription of the
22 answers given by me to the questions therein
recorded.

_____ DATE	_____ WITNESS SIGNATURE
_____ DATE	_____ NOTARY

21 (Pages 78 to 80)